

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

MFA.No. 1105 of 1996(C)

OPMV.509/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD

APPELLANT - PETITIONER :

**P.M. ABDUL HAMEED AMEER,
S/O. P. MOHAMMED, RESIDING AT
1924, 3A MAIN, 13TH CROSS
R.T.C. BANGALORE - 42,
VIJAYANAGAR, BANGALORE -42,
REGISTERED OWNER OF THE MARUTI
JYPSI NO.K.A.2 M/3553.**

BY ADV. SRI.K.G.GOURI SANKAR RAI

RESPONDENTS - RESPONDENTS:

- 1. SHENA GATTI M., S/O. LAKSHMANA GATTY,
MANIPPADY, RAMDAS NAGAR,KUDLU,
KASARAGOD TALUK P.O., RAMDAS NAGAR.**
- 2. B. NARASIMHA PAI, S/O. SARVOTHAMA PAI,
NO.9 - SUSEELA ROAD, DODDAMAVALLY,
BANGALORE (DELETED)**
- 3. THE MANAGER, UNITED INDIA INSURANCE
COMPANY LIMITED, BRANCH OFFICE, KANHANGAD
HOSDURG TALUK, P.O., KANHANGD.**
- 4. K. RAMACHANDRA, S/O. JAYANTHA, GAJANANA
COMPOUND, KULSHEKARA, MANGALORE - 5.**
- 5. VIJAYA BHARATHI RAI, S/O. K.B. BALAKRISHNA RAI,
VIJAYA LAKSHMI COMPOUND, KADIRI, MANGAORE.**
- 6. THE MANAGER, ORIENTAL INSURANCE COMPANY
LIMITED, BALMATTa BRANCH, MANGALORE.**

**RESPONDENT NO.2 IS DELETED FROM THE
PARTY ARRAY AT THE RISK OF THE PETITIONER
IN I.A. .NO.1602 OF 2007 AS PER ORDER
DATED 25.7.2007.**

**BY ADV. SRI.VPK.PANICKER
SRI.M.A.HAKIM SHAH**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K. PADMANABHAN NAIR, J.

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Dated this the 13th day of August, 2007

J U D G M E N T

Petitioner in O.P(MV) No.509 of 1994 on the file of the Motor Accidents Claims Tribunal, Kasargod is the appellant. Appeal is filed challenging the quantum of compensation awarded to the appellant as damages to property.

2. Vehicle belonging to the petitioner met with an accident. It was averred that a lorry bearing Reg. No.KA-01/5733 came and hit against the vehicle owned by the petitioner causing damages. According to the petitioner, immediately after the collision driver of his vehicle chased the lorry after parking his vehicle on the side of the road and at that time another stage carriage bus bearing Reg. No.CRX-3499 came and hit on the vehicle of the petitioner causing substantial damages to the vehicle. Petitioner filed the petition claiming Rs.1,00,000/- as compensation against the owners, drivers and Insurers of the lorry and the stage carriage bus. Owners and drivers remained ex parte.

Insurers alone contested the matter. Accident and existence of valid policy of insurance were admitted. It was contended that petitioner did not produce any vehicular records and as such Insurers are not liable. Negligence alleged against the drivers of the lorry and bus was denied. Quantum of compensation claimed was also denied.

3. Tribunal found that the accident occurred due to the negligence of the drivers of the lorry as well as the bus and the driver of the petitioner's vehicle was not negligent. Tribunal also found that as per the surveyor's report total loss suffered by the petitioner was Rs.78,012.70. Petitioner produced Exhibit A5 series, a set of bills, vouchers, etc., which would vouch a total expenditure of Rs.92,524.88. Tribunal found that the Statutory Welfare Tribunals are not trammelled by the technical rules relating to evidence. Where such Tribunals are satisfied that the petitioners have suffered loss then notwithstanding absence of crisp, cogent, specific and accurate data about such loss, the Tribunals can and ought to pass awards to make substantial justice available to the parties. The Tribunal also found that Exhibit A3 was

the report prepared by the Motor Vehicles Inspector assessing the damages sustained by the vehicle of the petitioner. The Tribunal found that Exhibit A3 report along with the photographs produced gives a clear idea about the extent of the damages caused. Thereafter Tribunal found that Exhibit A3 cannot be relied on since the Motor Vehicle Inspector who prepared Exhibit A3 was not examined. Tribunal further found that the petitioner did not apply to depute a Commissioner from the Tribunal to assess the loss sustained by the vehicle. It was further held that though petitioner had claimed Rs.92,524.88 as per Exhibit A5, there were only two receipts showing that petitioner paid Rs.55,642/- for carrying out the repairs. The Tribunal awarded only an amount Rs.25,000/- which according to the Tribunal is the minimum irreducible loss. The Tribunal passed an award directing the Insurer of the lorry to pay Rs.5,000/- and the Insurer of the bus to pay Rs.20,000/-. Challenging the quantum of compensation awarded, owner of the vehicle, who is the petitioner in the O.P., has filed this appeal.

4. The finding that the accident occurred due to the

negligence of the drivers of the lorry as well as the bus has become final and conclusive. The finding of the Tribunal that the petitioner is entitled to get compensation on account of the damages caused to his vehicle has also become final and conclusive. The only question arising for consideration is whether the quantum of compensation awarded by the Tribunal is adequate and reasonable.

5. Petitioner claimed Rs.1,00,000/- as compensation. As per Exhibit A4 report the loss sustained comes to RS.78,012.70. Petitioner produced Exhibit A5 series, a set of bills, vouchers, etc., to show that petitioner had spent a total sum of Rs.92,524.88 for repairing the vehicle. Tribunal did not give any reason for at least not considering the relevancy of two receipts which would show that petitioner paid Rs.55,642/- towards repair charges. It awarded only Rs.25,000/- on the ground that that is the minimum irreducible loss. I find it very difficult to accept the reasoning of the Tribunal. Petition itself was filed after repairing the vehicle. So no useful purpose will be served by taking out a commission. It is true that the petitioner could have

obtained the service of the Insurer's Surveyor to assess the value of the damages caused to the vehicle. But there is nothing on record to show that the owners of the offending vehicles either informed the appellant the details of Insurers or they himself had informed their Insurers. The damages were assessed by a licensed Surveyor. It is also true that he was not examined. Tribunal itself has stated that Statutory Welfare Tribunals are not bound by technical rules of evidence. Considering the evidence adduced and the receipts produced, I am of the view that the Tribunal ought to have awarded at least Rs.50,000/- as compensation on account of the damages sustained to the vehicle. So the petitioner is entitled to get Rs.25,000/- more from respondents 3 and 6 in the same proportion as ordered by the Tribunal, which will carry interest at the rate of 6%.

In the result, the appeal is allowed in part. An award is passed in favour of the appellant to recover an additional compensation of Rs.25,000/- with 6% interest from the date of petition till date of realisation in addition to the amount already awarded. This amount shall be deposited by the

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Insurers in the same proportion as ordered by the Tribunal.

On deposit, the appellant can withdraw the entire amount.

K. PADMANABHAN NAIR, JUDGE.

VSV

K. PADMANABHAN NAIR, J.

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J U D G M E N T

13TH AUGUST, 2007